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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirteenth session

SUMMARY RECORD OF THE 50th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 4 December 1995, at 10 a.m.

Chairperson: Mr. CEAUSU

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GE.95-19900 (E)

The meeting was called to order at 10.15 a.m.

GENERAL DISCUSSION: "DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS" (agenda item 5) (E/C.12/1994/12)

1. The CHAIRPERSON recapitulated the history of the Committee's work on the draft optional protocol being prepared by Mr. Alston (E/C.12/1994/12) and drew attention to the fact that a similar optional protocol was being prepared in the Committee on the Elimination of Discrimination against Women, on which he unfortunately had no information. At the present meeting contributions would be made by ILO and a number of non-governmental organizations (NGOs). He looked forward to hearing the further views of members on Mr. Alston's draft and, in particular, the preliminary views of new members who had not yet had an opportunity to express their opinions on the subject. The summary records of the proceedings would be sent to Mr. Alston to help him to finalize his text so that the Committee could adopt it at its thirteenth session and then transmit it to the Commission on Human Rights.

2. Ms. HODGES (International Labour Organization) said that ILO welcomed the opportunity to share with the Committee some of its experience in complaints procedures. Several different types of complaint could be submitted to ILO and she could provide documentation on the procedures available.

3. The ILO Constitution allowed representations to be made by workers' and employers' organizations. Article 26 of the Constitution allowed for complaints to be made by Member States, by individual delegates at the annual International Conference and by the Governing Body itself where one of the ratified conventions had allegedly not been observed. In the 1950s an agreement had been reached with the Economic and Social Council to allow a special procedure, called the "special freedom of association procedure", only for trade union rights, in view of their importance in the ILO system. For that purpose, the Governing Body had established a standing tripartite committee to investigate complaints, which could be submitted only by workers' and employers' organizations. Consequently, in ILO access by individuals was limited and access by lobby groups such as Amnesty International was not possible, although over the years lobby groups had been quite skilful in channelling information verified by them into the ILO complaints procedures through trade unions and employers' associations.

4. As to the draft optional protocol, ILO was interested in the wording of article 1, paragraph 1, particularly in the phrase "the competence of the Committee to receive and examine communications from any individuals or groups subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights recognized in the Covenant". Such a formulation was extremely broad and might be made more precise if it were to refer to "any individuals or groups subject to its jurisdiction who alleged a failure to secure the observance by the State party of any of the rights recognized in the Covenant". Article 2 of the draft was worded in terms very similar to those of article 24, concerning representations procedure, of the ILO Constitution, except that individuals would be allowed to submit complaints.

5. In regard to article 3, paragraph 3 (a), it should be noted that the rule relating to the exhaustion of domestic remedies did not apply in the ILO procedures and that no abuse of those procedures had occurred as a result. Paragraph 3 (b) indicated that a communication would be declared inadmissible if it was being examined under another procedure of international investigation or settlement. She would like to know whether that restriction would apply to cases that were being considered in ILO, particularly under the trade union rights procedure. Also, did the word "international" cover procedures in the Council of Europe and other regional bodies? In that connection, she pointed out that, for example, ILO and UNESCO had an agreement concerning the status of teachers whereby cases already before one of them could not be proceeded with by the other until the first had reached its decision, cognizance of which would be taken by the second. Likewise, ILO's Committee of Experts would suspend its examination of a case being investigated by an ad hoc body under some special procedure. Ad hoc bodies did not have to transmit their conclusions to the Committee of Experts, but they invariably did so when they found that the provisions of a convention had not been observed.

6. As far as article 5 of the draft was concerned, she explained that in ILO there was no formal provision for injunctive relief. In the special trade union rights procedures, nevertheless, an emergency action procedure had been instituted so that when a receivable communication was registered and there was a danger to the life or safety of the persons concerned, the secretariat was empowered to send a telegram or fax to the head of State or ministry of labour concerned advising that a formal complaint had been lodged and requesting that no action should be taken pending submission of the formal reply; in some cases the secretariat was empowered to send a delegation to the country involved. It would be interesting to know how the present Committee would use interim measures in such circumstances.

7. In ILO's opinion, paragraphs 3 and 4 of article 6 ought to constitute a separate article, since they were important enough to merit such prominence. It would also be useful to make it clear whether the report referred to in paragraph 4 was to be public and was to be published in the languages of the United Nations system or in the language(s) of the parties. As far as paragraphs 1 and 2 were concerned, ILO's experience indicated that the identity of the author must be made known. The three-month time-limit within which the receiving State must submit explanations or statements seemed to be too short. In the case of federal States, it might take up to a year to receive a full reply.

8. The Committee might wish to consider the possibility of adding the words "such as specialized agencies" in the second sentence of article 7, paragraph 1, after the words "other sources". The procedures under articles 24 and 26 of the ILO Constitution also allowed for the receipt of information from other sources, and, in connection with complaints made under article 26, other States parties which might have information relevant to the allegations made were formally invited to submit such information. That provision had proved particularly useful, for example, in a case concerning trade union rights in Poland and in a case concerning discrimination in employment on the ground of political opinion in the Federal Republic of Germany. If such a provision was included in the draft optional protocol, it

would have to be made clear what degree of importance was to be attached to the views of other States parties on the information they had supplied and whether bodies like specialized agencies which had provided information would be expected to play an active part in the proceedings.

9. Also, it would be necessary to determine the status of other publicly available information such as the statistics and data published in ILO's Year Book of Labour Statistics. For example, in a case concerning equal remuneration of men and women in which conflicting evidence was given by the parties, would the Committee seek out such information or wait for it to be provided by ILO? In paragraph 5 it might be wise to insert an adverb of time after the word "transmit" and, if the Committee decided to incorporate a reference to specialized agencies and other sources, to indicate whether they too would receive a copy of the Committee's final views and when such views would become public. Again, the three-month period provided for in article 8, paragraph 3, might be unrealistically short.

10. In any case, the Committee could rest assured that any action taken at the international level to help ensure observance of the important rights set forth in the International Covenant on Economic, Social and Cultural Rights, including an optional protocol to make sure that individuals had a fair chance of submitting alleged violations for public scrutiny and settlement, would have ILO's full support.

11. Mr. MARCHAN ROMERO inquired about the frequency with which ILO received complaints.

12. Mr. AHMED asked about the extent to which States parties complied with ILO's recommendations and whether ILO conventions established an obligation to comply with them.

13. Mr. ALVAREZ VITA asked the representative of ILO if she could circulate a summary of her remarks. Unfortunately, he had been called away briefly and had not quite understood the comments about the Committee's cooperation with the specialized agencies or the possibility that complaints might be submitted by NGOs and he would like to know how cases of dual jurisdiction could be avoided.

14. Mrs. JIMENEZ BUTRAGUEÑO, referring to article 1, said that it might be too complicated for the Committee to take up alleged violations of "any of the rights" recognized in the Covenant, since some rights were justiciable while others were not. She would therefore like to know ILO's opinion on whether article 1 ought to be worded broadly or narrowly.

15. The CHAIRPERSON said that, under Mr. Alston's proposed text, the Committee, if empowered to receive such communications, would not act like a court of law. Before making its final recommendations, it would first consider the admissibility of the complaint and seek an amicable settlement. A number of preliminary stages would thus intervene before the complaint came before the competent body.

16. Ms. HODGES (International Labour Organization), replying to questions about the frequency of use of the various procedures, said that there were currently 92 special trade union rights cases pending before the relevant committee. Usually, there would be more than 100 cases under consideration at any one session - not all of which would be new cases. The article 24 representations procedure under the ILO Constitution, which was open only to workers' and employers' organizations, had been little used in the 1920s, 1930s and 1940s, but had now become very popular. Thirteen cases were currently outstanding, most of them lodged by trade unions, although a few employers were also availing themselves of that right. The other procedure under the ILO Constitution, namely the article 26 complaints procedure, whereby outside experts were asked to serve as independent members in a quasi-judicial procedure, was very rarely used, being both slow - at least one year would elapse between appointment of the outside experts and publication of their report - and costly. The two famous examples of that procedure in the past 10 years had been a case involving trade union rights in Poland and one involving discrimination on the basis of political opinion in the Federal Republic of Germany.

17. Statistics regarding compliance with the recommendations were harder to supply. The introduction to each report of the Committee on Freedom of Association contained a section on progress entitled "Effect given to the recommendations of the Committee and the Governing Body". Its most recent report listed 16 cases in which a Government had been asked to release an imprisoned trade unionist, to cease a discriminatory practice, or to change legislation not in compliance with the Convention. That section was short and pithy and tended to attract the most attention in the media. It concluded with a reminder paragraph enumerating the Governments which had failed to indicate that they were working towards compliance. Over the years, the paragraph was growing longer and longer, and currently more than 20 countries were cited.

18. Compliance with the constitutional procedures under articles 24 and 26 was harder to monitor. If a violation was found under those procedures, it could be funnelled back into the regular procedures, where it would be followed up in the context of ordinary reporting by States. However, it was necessary to study carefully the detailed year-on-year findings of the Committee of Experts in order to ascertain the true state of compliance in such circumstances.

19. As to the extent to which recommendations were binding, article 19 of the ILO Constitution required Member States to give effect to decisions regarding ratified conventions and, in the case of the trade union rights procedure, unratified conventions. There was thus a formal constitutional obligation for Member States to abide by recommendations. Again, however, compliance was very difficult to check in practice. There had been a debate in ILO in recent years regarding the desirability of applying sanctions in order to encourage compliance. A working party of the Governing Body established to look into the social dimensions of the liberalization of trade had on two occasions had a heated discussion of the question whether international trade agreements should include a clause linking trade to respect for human rights, and especially for workers' rights. In the past, there had been instances - concerning trade union rights in Chile in the late 1970s, and China after

the Tiananmen Square incidents, for instance - when the Director-General had stated in public meetings of the Governing Body that he did not wish to see the victims further punished as a result of the isolation of a country through the suspension of technical assistance.

20. In regard to the query by Mr. Alvarez Vita, a written résumé of her introduction would of course be circulated to Committee members. On the question of dual jurisdiction, ILO had a reciprocal agreement with UNESCO whereby one organization would freeze its procedures until the other had made its conclusions public, whereupon those conclusions would be taken into account by the other organization. In practice that might mean that no further examination was needed, and that the second organization might simply take note of the first's findings. It would be interesting to learn the Committee's views on how it might treat a communication under its proposed optional protocol in a case already being dealt with by, for instance, the ILO Committee on Freedom of Association. Under the present terms of the draft optional protocol, would the Committee postpone its consideration pending publication of the ILO Committee's findings?

21. As to the role of non-governmental organizations (NGOs), under ILO's tripartite structure, workers' and employers' organizations, as NGOs, had enormous powers to lodge complaints. Non-occupational NGOs did not have such powers, but they had none the less become very skilful at channelling their information through international workers' organizations such as the International Confederation of Free Trade Unions, which had access to ILO procedures and were able to cite information from NGO sources. However, such NGOs had no formal right to submit complaints.

22. With reference to the very broad scope of article 1, her Organization was concerned, not at the very wide range of rights covered, but at the inordinately large number of individuals or groups who might claim to be victims of a violation of the Covenant. There was a risk of the Committee being inundated with communications. Her Organization's proposed wording - allegations of failure to secure observance by the State party - might be helpful in that regard. ILO had a total of 175 conventions. Most of the complaints submitted, and the ones that attracted the most attention in the media, concerned a core group of workers' rights conventions: conventions on trade union rights, discrimination in employment, forced labour and child labour. But trade union and employers' associations also submitted complaints under highly technical conventions - concerning such matters as hours of work, maximum weights and dust levels in industrial premises. As for the point raised by Mrs. Jiménez Butragueño, ILO had a similar problem with regard to its promotional conventions, such as Convention No. 122. That Convention's goal of freely-chosen, full and productive employment was to be achieved progressively over time; States parties need merely show in their reports that they were taking progressive measures to comply with it. Complaints under Convention No. 122 were thus very difficult to verify. Similar problems might arise under the Covenant when it came to obtaining information.

23. Mrs. AHODIPKE asked, first, whether the representative of ILO considered that States should be allowed the possibility of submitting communications,

as was suggested by the American Association of Jurists. Secondly, did she consider that the Committee should receive communications claiming violations of rights by United Nations bodies or specialized agencies?

24. Ms. HODGES (International Labour Organization) said that ILO procedures did indeed envisage the possibility of States submitting complaints against other States. In such circumstances, however, both States must be parties to the relevant ILO convention. Under the procedures provided for in its Constitution, when other evidence was sought in a case, neighbouring States were assigned the role of presenting further information - a role similar to that envisaged in article 7 of the Committee's draft optional protocol. The system had proved very successful in practice. The special trade union rights procedure also allowed States to bring a complaint alleging a violation of trade union rights. Either because it was less well known or because it was less popular, that procedure had only been used on one occasion, when the Government of Kuwait had alleged a violation by Iraq of the trade union rights of Kuwaiti workers during its occupation of Kuwait in the Gulf war.

25. As to communications concerning alleged violations of rights by United Nations bodies and agencies, complaints of that kind were not admissible under ILO procedures, for under the Constitution and relevant agreements it lay with States to secure observance of the rights set out in the instrument in question. In any event, no such complaints had been submitted recently. Some had been submitted in the past, particularly under the trade union rights procedure, and had been dealt with by the Committee in the introduction to its report, in a paragraph entitled "Irreceivable complaints", which would detail the date of the communication, the organization or agency mentioned, and the fact that, in application of the Organization's rules, the communication had been declared irreceivable.

26. The CHAIRPERSON thanked the representative of ILO for the valuable information she had provided. He drew members' attention to a document (E/C.12/1995/WP.4), dated 16 October 1995, submitted under the present item by the American Association of Jurists and the Latin American Peace and Justice Service. A copy would be transmitted to Mr. Alston. He invited Mr. Teitelbaum to present the document on behalf of those two organizations.

27. Mr. TEITELBAUM (American Association of Jurists) said that the obligations incumbent on States and deriving from the Covenant were obligations to act (legislation, adoption of measures); obligations to refrain from acting (non-interference with trade union organizations); respect of the rights of self-determination and of sovereignty over the natural resources of peoples of other States; and the obligation to refrain from adopting regressive measures (arts. 4 and 5 of the Covenant).

28. Thus, violations of those rights could take the form of violations by omission (failure to take measures) or violation by action (for instance, violations of freedom of trade union association or of the right of self-determination, or the adoption of regressive measures of a nature to deprive individuals of the enjoyment of any of the rights mentioned in the Covenant or impeding their implementation).

29. Even the rights which were to be introduced progressively constituted obligations of immediate effect "to the limits of available resources" (general comment 3 of the Committee), especially where there was a need to protect the most vulnerable groups; if measures were not being adopted for their progressive implementation; and if regressive measures impeding their gradual implementation were adopted. The organizations he represented thus considered that the possibility of recourse under the optional protocol should extend to all the rights set forth in the Covenant, having regard to the particular circumstances of the case and the actual situation in any given country.

30. The capacity to submit communications or complaints should lie with the victims (individuals or groups) or with their representatives and, to quote the language used in article 44 of the American Convention on Human Rights (which was referred to in paragraph 6 of article 19 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)) "... any person or groups of persons, or any non-governmental entity legally recognized ...".

31. Besides being incorporated in the American Convention on Human Rights, the capacity of any institution or individual with reliable knowledge of the facts to submit complaints (actio popularis) was specifically admitted in international standards and institutions such as the African Charter on Human and Peoples' Rights (art. 56). It was accepted in the procedures of the International Labour Organization (Committee of Experts on the Application of Conventions and Recommendations, Committee on Freedom of Association), within which national trade unions could submit complaints concerning situations in their respective countries and the international organizations could do so with respect to any country. In UNESCO there was a tendency, even in committees on international human rights covenants and conventions, to concede a more active role to non-governmental organizations. That tendency was also perceptible in ILO, where, as its representative had stated in a roundabout manner, non-trade union NGOs also received a hearing, as their complaints were channelled through the trade union organizations and could be submitted unofficially to committees. NGOs even had the opportunity, of which they had availed themselves, to speak at the plenary session of the ILO International Conference and to participate in committees as observers. He understood that consideration was being given to the possibility of changing the procedures so as to place such indirect participation by non-trade union NGOs on a more formal footing.

32. The text of the Additional Protocol to the European Social Charter, providing for a system of collective complaints, adopted by the Committee of Ministers on 22 June 1995 and opened for signature by States on 9 November 1995, also authorized complaints alleging unsatisfactory application of the Charter from: international organizations of employers and trade unions; other international non-governmental organizations with consultative status; representative national organizations of employers and workers in the impugned State; and other non-governmental organizations which the State had recognized as having that right (arts. 1 and 2 of the new Protocol to the Charter). Excluding NGOs from the parties with the capacity to submit complaints under the optional protocol to the International Covenant

on Economic, Social and Cultural Rights would be a retrograde step in the current dominant international trend and would ignore the fact that fundamental human rights were peremptory rules (jus cogens) and universally applicable (erga omnes).

33. States had been excluded without valid reason from the list of parties able to submit communications - an omission that was particularly striking when one recalled that the International Covenant on Civil and Political Rights (arts. 41 et seq.) and the Convention on the Elimination of Racial Discrimination (arts. 11 et seq.) and the Convention against Torture (art. 21) conferred that right on States. In the case of the optional protocol to the International Covenant on Economic, Social and Cultural Rights, in view of the specific nature of those rights the capacity of States to submit communications should extend not only to complaints of violations committed in another State, but also to violations committed on their own territory by another State or by an organization of the United Nations system (for example, violation of the right to self-determination, the imposition of structural adjustment policies by international financial institutions, etc.).

34. Hence there was no justification for the exclusion of States, since it must be borne in mind that the State was one of the passive entities concerned by economic, social and cultural rights and, as a consequence, was under an obligation to guarantee their implementation and to avoid violations thereof. Accordingly, an article should be added to the draft referring to communications from States and based on the relevant provisions of the International Covenant on Civil and Political Rights and of the Convention against Racial Discrimination and the Convention against Torture.

35. With regard to the activities of the international financial institutions or other bodies within the United Nations system which violated economic, social and cultural rights, it had been clearly affirmed a number of years ago, in paragraph 97 of the report of the Secretary-General (E/CN.4/1334), dated 11 December 1979, that, although only States were parties to the Covenant, "the specialized agencies of the United Nations must also be considered to have a duty to promote the realization of the right to development. The International Court of Justice has indicated that the rights and duties of entities such as the United Nations and the specialized agencies 'must depend on (their) purposes and functions as specified or implied in (their) constituent documents and developed in practice' (Advisory Opinion of the International Court of Justice, I.C.J. Reports, 1949, p. 180). The relationship between the United Nations and each agency is governed by an agreement concluded in accordance with Article 63 of the Charter. The human rights objectives of the United Nations as specified in the Charter are clearly applicable to the agencies".

36. The thesis that the specialized agencies fell within the sphere of competence of the Committee was corroborated by the fact that article 18 of the International Covenant on Economic, Social and Cultural Rights referred to the submission of reports by those agencies on the implementation of the provisions of the Covenant falling within the scope of their activities, while article 19 referred to transmission of those reports to the Commission on Human Rights for study and general recommendations.

37. Some of the rights set forth in the Covenant were by nature collective (art. 1, certain paragraphs in art. 7 and art. 8). Although the others were enunciated as individual rights, enjoyment of them depended on a context guaranteeing enjoyment of those rights by the entire community; in other words, all economic, social and cultural rights were rights with a collective element.

38. Once the additional protocol was in force, the Committee's main task should be the examination, on the basis of the communications submitted, of situations which appeared to evidence a collective, generalized and/or systematic violation of one or more of the rights set forth in the Covenant. The Committee should also examine individual complaints where, in its view, the gravity of the facts alleged, and/or the extent to which the individual case might offer evidence of a generalized situation, justified intervention by the Committee. In that regard, he agreed with the representative of ILO that, if the Committee were to accept all individual communications submitted to it, it would be inundated with communications. The Economic and Social Council's so-called "1503 procedure", whereby communications were allowed to accumulate until such time as they could be said to reveal a systematic pattern of violations, could serve as a good example in that regard.

39. Paragraph 1 of article 1 of the draft stated that communications could only be submitted by individuals or groups subject to the jurisdiction of the State responsible for the alleged violations. The text was almost exactly the same as that used in article 1 of the First Draft Optional Protocol to the International Covenant on Civil and Political Rights.

40. Article 1 of the First Optional Protocol derived in turn from article 2 of the International Covenant on Civil and Political Rights, which restricted the obligation of States to respecting and guaranteeing civil and political rights "to all individuals within its territory and subject to its jurisdiction". The present draft optional protocol omitted the reference to territory, leaving only the condition that those submitting the communication were subject to the jurisdiction of the State against which the complaint was directed.

41. The text of article 1 of the First Optional Protocol had caused considerable implementation problems for the Human Rights Committee, precisely because it restricted the right to allege the commission of violations by a State to individuals subject to the jurisdiction of that State. In the exercise of its quasi-jurisdictional functions, that Committee had found that a literal application of article 2 of the Covenant and article 1 of the Optional Protocol would remove protection from certain individuals turning to the Committee to complain of serious human rights violations. That was the case, for instance, with Uruguayan citizens abducted by members of the Uruguayan armed forces in Argentina and Brazil and secretly moved to Uruguay during the 1970s. The State denounced by the victims was Uruguay, yet the violations had been committed outside Uruguayan jurisdiction. The Human Rights Committee had rightly pointed out that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory". To arrive at that conclusion, the Committee had referred to the paragraph in

article 1 of the Protocol stating that the Committee could receive and consider communications from individuals subject to the jurisdiction of the State concerned, thus interpreting jurisdiction as being personal and not territorial. In the Uruguayan case, had one of the particular victims - of dual nationality - been only of foreign nationality, could she have been deprived of protection on the grounds that personal jurisdiction could not be invoked? Clearly not.

42. He disagreed with the contention of one member of the Human Rights Committee that article 1 of the Protocol should be interpreted as prohibiting States from violating the human rights of their nationals outside national territory. That reasoning would lead to the absurd conclusion that the Covenant did not prohibit States from violating the human rights of foreigners outside of their territory. As the Human Rights Committee had itself noted, with reference to the former Yugoslavia, "States parties were responsible for the observance of human rights when their representatives were involved and when their acts affected human beings, even outside their national territory".

43. The Human Rights Committee had consistently interpreted the Covenant to mean that, in special circumstances, persons might fall under the subject-matter jurisdiction of a State party even when outside that State's territory. Two types of obligations were incumbent on States under the Covenant: respect for the rights of all human beings, as a universal passive obligation, in all circumstances and all places, regardless of whether they were within their territory or subject to their jurisdiction; and the active obligation to guarantee the enjoyment of those rights by all individuals within their territory and subject to their jurisdiction. The phrase "who are subject to [the State's] jurisdiction" could apply only to the active obligation incumbent on States to guarantee the enjoyment of human rights, but in the general context of the Covenant, it could not in any way apply to the universal passive obligation of respect for human rights. The obligation to respect human rights was an erga omnes obligation, and any violation thereof justified intervention by the international community through its agencies established for the purpose. How, then, could victims be deprived of the right of recourse to the appropriate agencies because they were not "subjects" of the State committing the violation?

44. Furthermore, the International Covenant on Economic, Social and Cultural Rights, which should serve as the basis for the draft optional protocol, did not make the effect of the rights it enumerated conditional either upon territory or upon jurisdiction. Those rights implied a universal passive obligation to respect them, as was also true of civil and political rights, but their specific nature also created a universal active obligation to guarantee them.

45. Globalization of the economy was focusing increasing emphasis on what were known as the "rights of solidarity" in the context of economic, social and cultural rights, and highlighted the responsibility of third parties in violations of those rights, for example, the imposition of structural adjustment programmes by international financial institutions or the economic, financial and trade policies of certain States or transnational corporations. That was not to imply any release from responsibility of the State in which

those violations took place, but rather to introduce the concept of the joint responsibility of the authorities of the State and of the international organizations and/or other States that contributed by their policies to such violations.

46. It would therefore be a mistake to provide, in article 1 of the draft optional protocol, that complaints or communications could only be submitted by individuals or groups who were subject to the jurisdiction of the State responsible for the alleged violations. To do so would bring the Committee up against the same difficulties of interpretation as those currently faced by the Human Rights Committee in the proper discharge of its tasks. The inescapable conclusion was that there should be no restrictions whatsoever on the denunciation of violations of economic, social and cultural rights based on jurisdiction and/or territory and that article 44 of the American Convention on Human Rights might serve as a suitable model for the optional protocol. That text read: "Any person or group of persons, or any non-governmental entity legally recognized in one or more member States [of the Organization], may lodge petitions [with the Inter-American Commission on Human Rights] containing denunciations or complaints of violation [of this Convention] by a State party."

47. For the purposes of consistency, the words "Any individual or group claiming to be a victim", in article 2, paragraph 1, of the draft, should be followed by "and any non-governmental entity legally recognized in one or more States parties which has reliable knowledge ...". The use of the word "remedy" in article 8 was ambiguous, as it could refer either to reparation or solution, whereas it was the former that was intended. The phrase "or reparation" should be added.

48. Mr. WIMER ZAMBRANO said that the presentation by the representative of the American Association of Jurists highlighted the need to distinguish between justiciable and non-justiciable rights. Economic rights, for example, might not be observed by some countries because they lacked the resources. There were three general trends: to dismiss the Covenant entirely; to find all of its articles justiciable, as the Association did; and to find some articles justiciable and others not. There could be no substantive progress on the optional protocol without facing the serious problem of classification.

49. Mr. ALVAREZ VITA said that the Association's presentation paved the way for dealing with a difficult task by going beyond traditional interpretations. The optional protocol might include clauses protecting internationally such "third generation" rights as the right to development, sometimes also called "rights of solidarity", although the observance of all human rights required solidarity. What were the Association's views on environmental rights?

50. Mrs. JIMENEZ-BUTRAGUEÑO asked for the Association's opinions on how the Committee could intervene if regressive measures impeding implementation of the rights to be covered in the protocol, such as cut-backs in social security and other measures affecting older people, were adopted.

51. Mr. MARCHAN ROMERO said that he agreed on the need to establish a system for classifying the rights to be covered by the optional protocol; otherwise, the Committee risked facing an avalanche of complaints from all kinds of

groups and individuals. The Committee was trying to strike a difficult but necessary balance between the obligatory, universal applicability of economic, social and cultural rights and providing the system with a monitoring mechanism that could well be interpreted as interfering in the internal affairs of States parties.

52. The reference to the "jurisdiction" of a State party in article 1 of the draft text was intended to create a legal connection between a State and a group or individual and to cover both territorial and personal jurisdiction.

53. Ms. TAYA said that it would be interesting to consider the structural adjustment programmes of the World Bank from the viewpoint of the promotion of the economic rights of people in debtor countries. While the Committee was clear on the adverse effects of such programmes, it could not adopt its final views on such communications if it was not sure that an economic policy other than structural adjustment was better as a whole. In such cases, the scope of examination probably exceeded the Committee's mandate. What was the merit of such communications, which could be discussed directly with the World Bank? The Bank was now considering differentiating among structural adjustment programmes on the basis of the difficult situation of indebted countries, and not merely introducing social safety net programmes. What, furthermore, were the Committee's final views to be in such a case? Was it to advise countries not to accept structural adjustment programmes, or to give the Bank strategic advice on such programmes?

54. Mr. TEITELBAUM (American Association of Jurists), replying to the Committee's comments, said that on the question of justiciable and non-justiciable rights, the Association - as jurists and as an NGO - was obliged to stick to the rules and not to consider the reactions of States parties. The Covenant did not establish any hierarchy of rights, but it was still necessary to look at the everyday situation of each country: one could not demand the same things of a poor country as of a rich one. In fact, the Committee had responded well to that issue in its general comment No. 3 (1990), on the nature of States parties' obligations, to the effect that the States parties' ability to recognize the rights depended on the situation in each country. Some rights, however, were fundamental and were required of every State, such as the right to food. While some rights might not be justiciable at the present moment in a given country, they would be in the future.

55. In reply to the comment by Mrs. Jiménez Butragueño on regressive measures and to Ms. Taya's related observations, he said that the Committee's mandate required it not to determine the policies of States or international financial institutions, to advise them thereon or to propose alternative measures, but only to consider the extent to which the national situation reflected a country's implementation of the rights set out in the Covenant and whether any regressive measures adopted, which were usually structural adjustment measures, were applied equitably. A case in point was the situation in France. Whether or not France's policies were appropriate was irrelevant to the Committee's concerns, but it could be said that the measures taken to implement them punished the more disadvantaged sectors of society and

benefited the more privileged. By way of illustration, the development cost of a certain type of military aircraft alone exceeded the total social security deficit in that country. The issue, therefore, was one of equitable income distribution.

56. Another consideration to be borne in mind was the positive assessment by the World Bank and the International Monetary Fund of certain policies and programmes, notably in Africa and Latin America, as contained in a quarterly review published by the two institutions, despite their own findings about the adverse effects of those policies. One example was the 50 per cent devaluation of the CFA franc in 1994, which had resulted in a 40 per cent decline in purchasing power and real income in the African countries affected. Another was the trend in fiscal policy in Latin American countries, with an increase in direct taxes and a decline in taxes on wealth, which had worsened the situation of low-income groups and improved that of the wealthier groups. The argument that lower tax on high incomes would create more investment, and hence jobs, was invalidated by experience which demonstrated that most investment was for speculative purposes and did not go into production.

57. With reference to Mr. Alvarez Vita's comment about the specialized agencies, the American Association of Jurists shared the view of the International Court of Justice in the 1949 Advisory Opinion that all United Nations bodies and specialized agencies were bound by the instruments adopted by the United Nations, whether or not they had signed them. Articles 18 and 19 of the Covenant itself referred to the specialized agencies' reporting obligations. There was no reason why the international financial institutions or other bodies within the United Nations system, as international legal entities, should be exempt from the provisions of those instruments or take action contrary to them with impunity. The fact was that, despite their claims to the contrary, the World Bank and IMF were continuing to finance projects with adverse social and environmental consequences, one example being reforestation projects in the Amazon region. Lastly, he assured members that their questions and comments would be examined in greater depth.

58. Mr. ADEKUOYE said that there needed to be not only a classification of rights but also a classification of countries, according to their means and hence their ability to implement the provisions of the Covenant. In that connection, he cited article 2, paragraph 1, of the Covenant to the effect that each State party undertook to take steps "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The importance of the word "progressively" must be emphasized. On the subject of structural adjustment programmes, he would point out that many countries, such as his own, needed recourse to the World Bank and IMF, often because their economies had been mismanaged, to enable their economies to readjust. The loans were subject to conditionalities; if those conditionalities were removed, on what terms would the financial institutions release the resources required?

59. The CHAIRPERSON commented that Mr. Adekuoye's questions were no doubt best addressed to the financial institutions themselves; it was to be hoped that at a forthcoming session they might send representatives to discuss such issues with the Committee.

60. Speaking as a member of the Committee, he went on to say that he fully agreed with those who had argued in favour of a viable optional protocol, in other words one that would be signed and ratified by a large number of States parties. Several important issues first needed to be resolved, however, and he had a number of drafting suggestions that reflected views he had expressed at previous sessions. One question was whether it was advisable for the Committee to be the body receiving communications under a future optional protocol, since it derived its competence not from the Covenant but from a decision by the Economic and Social Council. He therefore proposed that article 1, paragraph 1, should be amended to read:

> "1. A State party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Economic and Social Council, of the Committee on Economic, Social and Cultural Rights or of any other body designated by the Economic and Social Council, to receive and examine communications from any individuals",

the rest of the paragraph being unchanged.

61. Article 1, paragraph 2, should read:

> "2. For the purposes of this Protocol, the Economic and Social Council designates the Committee on Economic, Social and Cultural Rights to carry out the functions provided for in this Protocol. If in the future the Economic and Social Council decides to designate another body, it shall consult with the States parties to this Protocol".

62. Mr. Wimer Zambrano and others had referred to a classification of rights, while Mr. Adekuoye had spoken of a classification of countries in accordance with available resources for implementing the rights covered by the Covenant. A solution might be to add a new paragraph to the proposed text of article 7, to the effect that the Committee should consider communications taking into account the provisions of the Covenant, especially the provisions of article 2, paragraph 1, namely the obligation of each State party to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant to the maximum of its available resources. That would be an indirect way of saying that communications would be examined on a different basis, according to the level of development of the country concerned and the resources available to ensure the realization of the rights referred to in the communication.

63. He supported the idea of classifying rights and thought that a list of specific rights derived from articles 6 to 15 of the Covenant should be drawn up. He therefore proposed the inclusion of an additional article reading:

> "Each State party to this Protocol shall choose from the list attached to the Protocol a number of at least [...] rights in respect of which its nationals may submit communications under the present Protocol. Afterwards such a State may declare in writing that it accepts communications in respect of other rights listed in the annex to this Protocol".

An annex to the Protocol would list specific rights recognized under each of articles 6 to 15 of the Covenant.

64. Finally, article 8, paragraph 1, might be amended to read:

> "1. Where the Committee is of the view that the facts presented in the communication amount to a violation by any authority of the State concerned of any of the rights recognized in the Covenant, the Committee may recommend that the State party take specific measures to remedy the violation and to prevent its recurrence."

65. The introduction of such a provision referring to the "facts presented in the communication" would circumvent the difficulty of judging the conduct of Governments which had omitted to take steps that would contribute to the realization of rights covered by the Covenant. The Committee would therefore be concerned not with omissions by Governments, but only with facts imputable to State authorities which had resulted in specific violations of economic, social and cultural rights.

66. Mr. KUNNEMANN (Foodfirst Information and Action Network - FIAN International), speaking at the invitation of the Chairperson, said that, in a context of increasing violations of economic, social and cultural rights throughout the world, there was unquestionably very strong support, and indeed a demand, for a right to complain and for a complaints procedure under an optional protocol. For that very reason, FIAN International was understandably very worried about attempts to water down the provisions of the draft before the Committee. He was aware that the Committee itself was in something of a quandary. While there were many arguments in favour of putting an optional protocol on the political agenda, not least the recommendations contained in the Vienna Declaration and Programme of Action and resolution 1994/20 of the Commission on Human Rights, it was also clear that many Governments were unprepared for such an instrument. Accepting the compromise solution of a diluted optional protocol might facilitate its adoption in the short term but might be detrimental to full realization of human rights in the long term, as it would stand in the way of a genuine protocol such as that pertaining to the International Covenant on Civil and Political Rights. The point of departure must be the indivisibility of human rights. The same applied to reducing the number of obligations to be included in an optional protocol and to referring to a State party's failure to give effect to its obligations rather than using the term "violations". There were no such restrictions in regard to civil and political rights.

67. Likewise, omissions should not be excluded from the optional protocol procedure. There were increasing numbers of marginalized people who suffered not only from violations of their rights but, further, from State authorities omitting to take the necessary measures to protect them, such as providing access to food, housing and health services. He none the less supported the main thrust of the present draft and informed the Committee about a draft document with similar concerns prepared by an international expert seminar organized by the Netherlands Institute of Human Rights in January 1995, although there were some differences which might be worth discussing.

68. With reference to the very important issue of international obligations, i.e. those which an international organization or a State had towards the citizens of other States - and he had in mind more particularly protection against human rights violations by intergovernmental institutions, especially

international financial institutions - it was necessary to find a way of providing for a complaint procedure in that matter as well, either in an optional protocol to the Covenant or in an additional instrument to be drafted later.

69. Lastly, he stressed the importance of mustering government and public support in every country and to place the question of the right to complain on the political agenda of countries in anticipation of the presentation of a final optional protocol.

70. The CHAIRPERSON, speaking as a member of the Committee, said that ideally, all situations imputable to Governments, including omissions, should be included in a complaints procedure, but that would call for ideal Governments, economic situations and resources. His concern was to produce an optional protocol that was acceptable to as many Governments as possible, which was why he advocated a mechanism that could be implemented step by step, initially giving Governments the option of undertaking to accept communications relating to a certain number of rights, in the expectation that, as conditions in their countries evolved, they would be prepared to accept complaints relating to a broader range of rights.

71. The many useful comments during the discussion had helped the Committee to make headway towards the goal of finalizing an optional protocol.

The meeting rose at 1 p.m.